

STATE OF MINNESOTA

FILED

DISTRICT COURT

COUNTY OF HENNEPIN

08 APR -9 PM 2:40 FOURTH JUDICIAL DISTRICT

State of Minnesota,

BY _____ DEPUTY
HENN CO. DISTRICT
COURT ADMINISTRATOR

Plaintiff,

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER**
27 CR 02-098794

v.

Myon Demarlo Burrell,

Defendant.

The above-entitled matter came before Judge Charles A. Porter, Jr. on March 10, 11, 13, 14, 17, 18, 25, 26, 27, and April 7, 2008 for a court trial. Michael Furnstahl, Esq. appeared for the State. Tracy Eichorn-Hicks, Esq. appeared for the Defendant. Prior to the commencement of the trial on March 10, the previously-made jury and *Blakely* waivers were confirmed by the Defendant on the record. At the close of evidence, the waiver of lesser-included charges was confirmed by the Defendant on the record.

Based upon the evidence adduced, the argument of counsel, and all of the files, records, and proceedings herein, the Court makes the following:

FINDINGS OF FACT:

The Charges

1. The Defendant is charged with the following eight counts for the murder of Tyesha Edwards and the attempted murder of Timothy Oliver, both acts occurring on November 22, 2002:

- Count 1: Murder in the first degree under Minn.Stat. §609.185(a)(1);
- Count 2: Murder in the first degree committed for the benefit of a gang under Minn.Stat. §609.229, subd. 2;
- Count 3: Murder in the first degree under Minn.Stat. §609.185(a)(3);
- Count 4: Murder in the first degree committed for the benefit of a gang under Minn.Stat. §609.229, subd. 2;
- Count 5: Attempted murder in the first degree under Minn.Stat. §609.185(a)(1);

Count 6: Attempted murder in the first degree committed for the benefit of a gang under Minn.Stat. §609.229, subd. 2;

Count 7: Attempted murder in the first degree under Minn.Stat. §609.185(a)(3); and

Count 8: Attempted murder in the first degree committed for the benefit of a gang under Minn.Stat. §609.229, subd. 2.

The Shooting

2. On November 22, 2002, at approximately 3:00 p.m., Timothy Oliver was standing on the porch of his Aunt Vera Gross' home at 3433 Chicago Avenue South, when a maroon Chevrolet Malibu with drove slowly southbound on Chicago in front of 3133.
3. At some time thereafter, gunshots were fired generally at Timothy Oliver from across Chicago Avenue as he remained in his aunt's front yard. Approximately eight shots were fired from one gun. The shooter was standing just south of the porch of a house at 3436 Chicago, which is across the street from 3433 Chicago. The shots were fired from behind the porch railing of 3436 Chicago.
4. No return shots were fired.
5. At the time of the shooting, eleven-year-old Tyesha Edwards and her younger sister, Lakia, were sitting at their dining room table on the lower level of 3431 Chicago Avenue South, which is a duplex next door to 3433 Chicago. A single bullet came through the wall, striking and killing Tyesha almost instantly. The bullet was removed during her autopsy. A second bullet also came through a wall of Tyesha Edwards' home and was found on an upper-level bedroom floor.
6. Eight casings were found on the front and side lawns between 3431 and 3433 Chicago Avenue South. Two bullets struck the porch railing at 3436 Chicago, with one making a deeper and one making a more superficial blemish. This damage is consistent with these bullets being fired recently and from close range.
7. One other bullet went through Timothy Oliver's pant leg but did not hit his body.
8. The angle of the bullet hole in the dining room wall at 3433 Chicago is consistent with the shots being fired from the area across the street near 3436 Chicago.
9. Following a very thorough police investigation that included interviews with intended target Timothy Oliver and Family Mob leader Ike Hodge, Hans Williams and Ike Tyson were arrested on Monday, November 25, 2002, and the Defendant was arrested the following day.

Eyewitnesses

10. Timothy Oliver is a self-described member of the Gangster Disciples. This shooting was an attempt to kill Timothy Oliver. He gave testimony under oath before the grand jury and at the first trial of this matter, but was killed before the current trial began. His prior testimony from the grand jury and the first trial was admitted under *Crawford*.

11. On the afternoon of November 22, 2002, Oliver was visiting Vera Gross at 3433 Chicago Avenue South, when he observed a maroon car with three passengers drive slowly by. Oliver observed that the car's passengers were the driver, an African American male whom Oliver knew as "Ike;" an African American male riding in the front passenger seat whom Oliver knew as "Skits;" and an Asian male with braided hair, riding in the back seat, whom Oliver could not identify by name. Oliver later identified the Defendant, Ike Tyson, and Hans Williams as the occupants when shown photo lineups by the investigating Minneapolis Police Officers. Shortly after the car drove by, Oliver heard gunshots and saw a black male, whom he knew as "Skits," shooting at him from next to a house across the street. Oliver testified that he knew "Skits" was a member of the Bloods gang. When he testified live at the first trial, Oliver identified "Skits," the shooter, as the Defendant. Oliver's testimony of his observations was not impeached by any prior inconsistent statements or history of being untruthful. His testimony was credible and is believed.
12. Anthony "Cornbread" Collins, a self-identified member of the Gangster Disciples gang and a friend of Oliver, had been working on his car in front of 3433 Chicago on the afternoon of the shooting, and was inside the upper level of 3433 when the shooting occurred. Collins saw Oliver in front of the house and saw a red car drive by with two black males in the front and one Asian person in the back. A few minutes after the car drove by, Collins heard shots fired but could not identify the shooter. There was no returned fire. Collins told Oliver to run, and Oliver ran to the side of the house. Shortly thereafter, Collins met a little girl who said her sister had been shot. Collins' testimony of his observations was not impeached by any prior inconsistent statements or history of being untruthful. His testimony was credible and is believed.
13. Thomas Bennett was visiting Vera Gross with Tim Oliver, Antonio "Little Cuz" Williams, and "Cornbread" on the afternoon of November 22, 2002. At the time of the shooting, Bennett was sitting in the front seat of Cornbread's car parked in front of 3433 Chicago. There were also two children in the car. Vera Gross' brother, Tracy, was working on the car. While in the car, Bennett saw a car driving southbound on Chicago slow down as it drove by; Bennett saw one person in the car. Bennett was still in Collins' vehicle when he heard shots fired; Bennett saw Oliver standing on the front steps when the shots were fired and afterward saw a new bullet hole in Oliver's pant leg. Bennett did not identify anyone involved in the shooting. Bennett's testimony of his observations was not impeached by any prior inconsistent statements or history of being untruthful. His testimony generally as to the shooting was credible and is believed.

The Co-Defendants

14. The Police investigation ultimately identified three people as the participants in the shooting: Isaiah "Ike" Tyson, Hans Williams, and Myon Burrell. Tyson and

Williams have pleaded guilty to their roles in the shooting and are currently serving their respective sentences. Hans' and Ike's statements regarding the events of November 22, 2002 have been varied over the time since the date of the shooting. Because of the inconsistencies within their own statements, between their various statements, and between their statements and the statements of other witnesses and the conflict between their statements and other uncontested or proven facts, to the extent of these inconsistencies, their testimony is not credible and is not believed.

15. Ike identified himself as a former member of the Tyson Mafia, who sometimes identified himself as a Blood, and who claims to have abandoned the gang life while in prison. Ike acknowledged that almost everyone in prison is in a gang, that he associates with Rolling 30's Bloods in prison, and that he has engaged in gang-related activity while in prison. Hans identified himself as a non-gang member who associates with known gang members. Both denied knowing for sure that the Defendant is a Blood. Both admitted, reluctantly, that a person could be hurt or killed for snitching, but both denied being snitches. Ike is a Blood. Hans is so closely associated with the Bloods as to be legally recognized as a Blood.
16. Approximately one month before the November 22, 2002 shooting, Hans and Ike were riding together in a car, when another car pulled up on the side, and Tim Oliver started shooting at them. No one was injured. Hans and Ike were aware that the Bloods and the Family Mob were engaged in an ongoing war at that time.
17. On November 22, 2002, Ike was living at 39th Street and 14th Avenue South and Hans was living at 38th Street and 2nd Avenue South in Minneapolis. Ike and Hans were good friends; both knew the Defendant from the neighborhood but neither had spent much time with him. On the morning of November 22, 2002, Ike went to Hans' house. Hans and Ike were driving in a maroon Malibu that day, but Ike said the car was already at Hans' house and Hans said they had to get a ride to pick it up at his girlfriend's workplace. This discrepancy is immaterial to the proof of these offenses but affects their credibility.
18. Once they got into the car, Ike drove. At some time that day, the two saw Tim Oliver at 34th and Chicago, where they exchanged "mean mugs," or unfriendly looks, with Timothy Oliver.
19. Ike testified that after he saw Oliver at 34th and Chicago, he drove to his home at 39th and 14th—not to an alley or to his brother Sam's house at 30th and Clinton—to get his new 40 caliber Smith & Wesson gun, which had a capacity for 12 shells, but was loaded with 8 shells that day, and that Hans waited in the car while Ike went inside to get the gun. Hans testified that Ike drove to an alley at 38th Street between Portland and Oakland—not at Ike's house and not at 3040 Clinton—where the two remained in the car and a black male walked up to the car and

handed the gun to Ike. Again, this discrepancy is immaterial to the proof of these offenses but affects their credibility.

20. Ike's brother, Samuel James, formerly known as Samuel Tyson, is a self-identified former member of the Tyson Mob and current member of the Bloods. James testified that on November 22, 2002, he was living at 3040 Clinton, and Ike often came to his house without calling ahead. He testified that Ike arrived in Hans' green Honda—not a maroon or red Malibu—with Hans and Tyree Jackson. Ike asked where the gun was; James told Ike where it was and saw him get it. James had no doubt why he gave Ike the gun. He testified that Ike, Hans, and Tyree Jackson then left the house together and all three later returned to the house. James acknowledged that he has lied to the police and has lied under oath in court on several occasions. This testimony is inconsistent with the testimony of Ike and Hans on this issue. This discrepancy is immaterial to the proof of these offenses but affects James' credibility.
21. Once he had the gun, Ike drove with Hans back toward 34th and Chicago to shoot at Oliver. Ike stopped the car and a third person got in. Ike testified that the third person flagged the car down at 37th and Chicago and Hans told Ike to let him in. Hans testified that the third person did not flag the car down or waive, but got in the car at 38th Street and 3rd Avenue when Ike stopped the car and told him to get in. Ike described the third person as dark-skinned, and shorter than himself, and possibly 17 years old. Hans described the third person as light-skinned, slender, 15 or 16 years old, and a little taller than himself (5'7"). Both Hans and Ike denied knowing the third person; each said the other appeared to know the third person. Both denied the Defendant was the third person. These denials are not credible, and it is clear that the third person was the Defendant.
22. By leaving the parked vehicle, walking between houses, and "hiding" behind a porch, the Defendant sufficiently separated himself from the car so as to not have immediately exited the car when he committed his subsequent acts. There was no eyewitness testimony regarding how soon after how soon the Defendant fired the shots after exiting the car.
23. Ike parked the car at 34th and Columbus, which is parallel to 34th and Chicago. Both Ike and the third person got out of the car and walked between the houses. Shortly thereafter, the two got back into the car quickly and Hans drove away. Ike testified that he alone walked between the houses and stood beside a house across the street from where he saw Tim Oliver standing, and Ike shot eight times, aiming at Oliver for the purpose of scaring, but not killing, Oliver. None of this portion of the story is true. Hans testified that he remained in the car, the radio was on, and he heard shots but did not know and did not want to know what happened. When he heard the shots fired, Hans moved from the front passenger seat to the driver seat. This portion of the story is credible, corroborated, and believed.

24. When the shooting ended, Hans drove away with Ike and the third person in the car. Ike, Hans, and the third person went together to Hans' house, where they stayed for a couple of hours and Ike later had his hair braided by a girl he was dating. Hans testified that he dropped the third person off where they picked him up, and then Hans and Ike went to Hans' house. While there, they saw a breaking news story on television that a little girl was shot by a stray bullet on Chicago Avenue; and at that time, Hans and Ike got back into the car and drove to the scene of the shooting, where they saw flashing lights, an ambulance, and yellow tape. They did not get out of the car. They then picked up a female then returned to Hans' house, where the female braided Ike's hair.
25. The gun has not been found. Ike left the gun in the car behind Hans' house and never saw it afterward. In the days between the November 22 shooting and their arrests on November 25, 2002, Hans urged or begged Ike to remove the gun from the silver car at Hans' house.
26. Hans and Ike were arrested together three days later, on Monday, November 25, 2002, along with Hans' girlfriend, Angela. Ike initially did not acknowledge his role to the police, but eventually admitted he was involved in the shooting. Hans similarly was not initially forthcoming with the police. Hans and Ike have both pleaded guilty.
27. Ike gave testimony about his conversations with his attorney, Assistant Hennepin County Public Defender Richard Trachy, that waived the attorney-client privilege. Prior to pleading guilty, Ike told his attorney that he refused to accept a plea offer that included testifying against the Defendant because Ike feared he would be labeled a "snitch" and that would be a death sentence. Ike initially told his attorney that the shooter was an unnamed person who was not the Defendant, but eventually agreed to testify under oath at his own plea hearing that, in truth, the Defendant was the third person and was the shooter.
28. Hans and Ike both wrote letters for the Defendant while all three were in prison indicating that the Defendant was not the third person involved in the shooting that killed Tyesha Edwards. While in prison but prior to writing the letters, incarcerated Bloods were calling Ike a "snitch," and Hans was beat-up. These letters were false.
29. Both Hans and Ike have identified the Defendant as the shooter out of court. In a phone call shortly after his arrest, Ike told Shiron Edwards to tell Little Skits that he better not be found, and when Shiron responded that Little Skits was arrested the previous day, Ike said, "For real? . . . Damn." Ike told the probation officer preparing his presentence investigation that he had tried to restrain the Defendant from shooting because there were innocent bystanders in the area. While in prison, Ike also told Lovell Ross, a/k/a Delvecchio Smith, that Skits was the shooter and that Skits was aiming for "Little Timmy." While in prison, Ike told Eldioju Reynolds that Skits was the third person and was the shooter because

Skits wanted to “earn his stripes.” In a phone call to his father, Hans said the mother of the younger one, the one who killed the girl, was killed in a car accident. The Defendant’s mother was killed in a car accident.

The Defendant’s Incriminating Statements

30. The Defendant has made several incriminating statements while in jail.
31. On a recorded phone call to his close friend Esque Dickerson, the Defendant admitted to being in the car with Hans and Ike when the little girl was shot; the Defendant described the car the three were in as a red car, like a Ford, with the name beginning with the letter “M.” Dickerson was a reluctant witness for the State, but the evidence of the Defendant’s admissions in this phone call came in through a recorded phone call between Dickerson and her then-boyfriend, George Canady, that took place a few hours after the call in which the Defendant made the admissions. The evidence of the Defendant’s admissions to Esque Dickerson was credible and is believed.
32. On a recorded phone call to his mother, the Defendant said, “I mean, I’m not innocent, mom, . . .” This phone call was credible evidence of this admission and is believed.
33. In quad 10A of the Hennepin County jail, the Defendant had several conversations with his cell neighbor, James Turner, who did not previously know the Defendant. Turner observed that when the Defendant first arrived in quad 10A, in November 2002, he was mad, upset, angry, and yelling. Turner and the Defendant prayed together and had conversations about the Defendant’s case. The Defendant told Turner that that he, Tyson, and a third person (who had been beat-up in jail), were driving in a maroon car looking for the Family Mob, and that the car belonged to the girlfriend of the one who was beat-up. The Defendant and Tyson got out of the car, chased the intended target through the houses, and that the Defendant started shooting, while the third person remained in the car. The Defendant said Tyson directed him to shoot because he was a “rider,” earning his stripes, and that he was shooting at a rival in the Family Mob, but that the bullet went the other way and hit the little girl. Turner did not read the newspaper and did not watch the news during his time with the Defendant in quad 10. Prior to meeting the Defendant in quad 10A, Turner did not know the Defendant, Hans, Ike, or Tyesha. Turner has been diagnosed with paranoid schizophrenia, and tends to hear voices when he is off his medication and is around a lot of people. Turner was not hearing voices during his time with the Defendant in quad 10A. Turner’s testimony of the Defendant’s admissions was not impeached by any prior inconsistent statements or history of being untruthful. His testimony was credible and is believed.
34. In the St. Cloud prison, the Defendant told Dameon Leake, a rival gang member, that when Tyesha Edwards was killed the Defendant was trying to “smoke”

“Little Timmy.” “Little Timmy” was Timothy Oliver of the Family Mob. Leake’s testimony of this statement was not impeached by any prior inconsistent statements or history of being untruthful. His testimony was credible and is believed.

35. Kiron Williams, a self-described member of the Family Mob, got into a fight with the Defendant at the Hennepin County Jail in July 2005. The fight began when Kiron told the Defendant he was killing little kids and the Defendant responded by saying the bullet was meant for Kiron’s [obscenity] homeboy, Oliver. A physical fight ensued. Kiron Williams is currently serving a sentence in federal prison and has asked to be moved to a safe place, but with no possibility of a downward departure, for his testimony here. His testimony of this incident was not impeached by any prior inconsistent statements or history of being untruthful. His testimony was credible and is believed.

36. In May 2007, while in the Hennepin County Jail, the Defendant told Terry Arrington that the bullet that killed Tyesha Edwards was meant for Tim Oliver. Arrington did not hear the Defendant say he was the shooter. Arrington is a self-described member of the Black Stone gang, which is a friend of the Family Mob and an enemy of the Bloods. Arrington’s testimony was not impeached by any prior inconsistent statements or history of being untruthful. His testimony was credible and is believed.

Other “Bad Acts” Committed by the Defendant

37. Evidence of other “bad acts” done by the Defendant was admissible at trial to prove motive. The State offered testimony of several “bad acts” to prove the Defendant’s motive for committing the crimes alleged in the present case.

38. Dameon Leake, a self-identified member of the Rolling 60’s Crips, who is older than the Defendant, testified about two prior incidents involving the Defendant, whom Leake identified as a member of the Rolling 30’s Bloods with the nickname “Little Skits.” Leake was a friend of Timothy Oliver and an enemy of the Defendant. In November 2002, Leake knew that people were trying to harm the Defendant, but Leake himself was not participating in the attempts because he viewed himself as having an unfair advantage due to his age, physical stature, and rank in his own gang. On a date prior to November 22, 2002, Leake was hanging out at Portland and Franklin with, among others, “Little Cuz” and “E.” Shortly after “Little Cuz” left, the Defendant, Hans Williams, and a third person walked toward him from Oakland, spreading out as they crossed the street. Each of the three had a gun. The Defendant began shooting at Leake and his group and yelled “Rolling 30’s Bloods gang.” No one was hit, and the incident was not reported to police because the people involved in this type of incident routinely do not report these incidents.

39. The second incident involving Dameon Leake was a brief conversation he had with the Defendant in the St. Cloud prison. Leake and the Defendant crossed paths in the hallway; the Defendant said he was aiming at "Little Cuz," not at Leake, in the prior shooting. Leake believed the Defendant was lying, and was really shooting at him, because "Little Cuz" had left before the Defendant shot. Leake noticed that the Defendant was heavier and no longer little, and decided he would beat the Defendant up the next time he saw him because of the earlier shooting. Leake mentioned Tyesha Edwards to the Defendant. The Defendant replied that he was trying to "smoke" Little Timmy of the Family Mob.
40. Dameon Leake is currently awaiting sentencing on drug charges and testifying truthfully at this trial is part of his plea negotiation. Leake did not report the November 2002 shooting or the St. Cloud conversation to the police until recently, because it is common practice in his community to not report these types of incidents to the police. Leake acknowledged that he could be killed for testifying at this trial because snitching is a violation of gang rules. Leake's testimony of the 2002 shooting and the St. Cloud conversation was not impeached by any prior inconsistent statements or history of being untruthful. His testimony was credible.
41. Terry Arrington, a self-described member of the Black Stone gang, was in a park on Franklin Avenue in May 2002 with Tim, D, Little Cuz, and others, when a carload of Bloods drove by. The Defendant hung out the window, holding a red rag around his hand, and fired shots at Arrington's group and yelled "What up; Blood." Arrington is currently in federal custody awaiting sentencing and could get a lesser sentence for testifying truthfully here. Arrington's testimony of the shooting incident was not impeached by any prior inconsistent statements or history of being untruthful. His testimony was credible.
42. Deleon Walker testified about one prior incident in which the Defendant shot at him. According to Walker, in November 2002, there was a war between the Family Mob and the Bloods that involved shootouts. Walker identified the Defendant as a Blood with the nickname "Skits." On November 25, 2002, the Monday following the shooting at Tim Oliver, the Defendant was walking down Lake Street with Artavies "Tay" Brown. Tay was walking with a limp because he had been shot in the foot at some time prior to this incident. Deleon Walker, who was friendly with the Family Mob, the 20's gangs, and the Gangster Disciples, was standing in front of the coffee shop next to 701 Lake Street with Timothy Oliver's girlfriend, Shay. Walker was a friend of Timothy Oliver and an enemy of the Defendant. Walker saw Tay and Skits, whom he knew to be Bloods, coming from Columbus Avenue and walking toward him. Tay said, "How's that Blood life treating you," and Walker immediately ran into the coffee shop. When Walker exited the coffee shop, Skits fired two to four shots and hit a Somali man in the leg but did not hit Walker.

43. Deleon Walker is currently in state prison awaiting sentencing and could get a lesser sentence for testifying truthfully here. Walker has safety concerns at Stillwater. Walker's testimony of the November 25, 2002 shooting was not impeached by any prior inconsistent statements or history of being untruthful. His testimony was credible.
44. In the winter of 2000, the Defendant was with his then-girlfriend and her baby, and Artavies Brown, when Artavies told the Defendant to shoot at a nearby car. The Defendant shot.

Alibi Evidence

45. Jillian Sully testified that on November 22, 2002, she was standing outside at 37th and Chicago across the street from Tavia's hair salon, and was talking to the Defendant when she heard 2 or 3 gunshots. Sully had left work at her temporary job at Wells Fargo around noon, drove 15 minutes to Tavia's, and had just had her hair washed when she went outside for a smoke, saw the Defendant, and heard the gunshots, and within minutes, heard sirens. Sully then went back inside Tavia's to continue her hair appointment, and within hours, while she was still at Tavia's, people in the salon said someone was killed. Sully concluded that the 2 or 3 shots she heard while standing with the Defendant at 37th and Chicago were the shots that killed Tyesha Edwards. Sully testified that a few days later, when she saw the Defendant was arrested, she called the police at the direct number for the third precinct, not at the hotline number publicized in the media, and that she did not receive a return call until recently. Such a series of events would be inconsistent with the police protocol in place at that time.
46. Sully further testified that she knew the Defendant from the neighborhood but did not know him well and did not know his family; that she was familiar with the Bloods and had friends growing up that could be identified as Bloods; but she could not identify the Defendant as a Blood.
47. Sully told Sgt. Zimmerman that she heard only one gunshot. When she left the courtroom after testifying, Sully hugged members of the Defendant's family in the hallway. Sully has a criminal history that includes being arrested with individuals who have been identified as Bloods or other gang members.
48. Sully's testimony was impeached by her acknowledgement on cross-examination of inconsistencies in her own testimony, as well as undisputed rebuttal testimony that Sully did not work with Temp Force in November 2002 and she did not work for Wells Fargo through Temp Force. In addition, several witnesses who were either at the scene of the shooting or participated in the police investigation gave undisputed testimony that approximately 8, and not 1, 2, or 3, shots were fired in the shooting that killed Tyesha Edwards.

49. In light of Sully's contradictory testimony regarding the number of shots she heard, what number she used to contact the police, her familiarity with the Defendant's family, and her affiliation with Bloods members, as well as her impeached testimony regarding her own employment on November 22, Sully's conclusory testimony that the Defendant was with her at the time of the shooting that killed Tyesha Edwards on the afternoon of November 22, 2002 was not credible.
50. James Graham testified that on November 22, 2002, the Defendant was with him, at Graham's house playing video games from about 2:15 pm until about 5:00 pm, though Graham did not check the time carefully. Graham's testimony was not impeached by any prior inconsistent statements or history of being untruthful. However, Graham's testimony that the Defendant was with him at the time of the shooting is not credible because it is implausible. Graham's testimony conflicts with the totality of the evidence presented at trial which overwhelmingly proves the Defendant was the third person involved in the shooting that killed Tyesha Edwards.

Tyree Jackson

51. Throughout this trial, the defense has attempted to prove the Defendant was not the third person involved in the shooting that killed Tyesha Edwards because Tyree Jackson was the third person.
52. The name "Tyree" or "Tyee" was first mentioned to the police in 2003 by then-defense counsel after the jury was picked but before the first trial began. The police investigated but did not have a last name and their database included several "Tyrees" or "Tyees."
53. Tyree Jackson is currently in prison for murder but was not in jail or prison in April 2003.
54. At trial, Hans Williams was shown a photograph of Tyree Jackson and testified that the person in the photograph was the third person. However, prior to trial, Hans was shown the same photograph of Tyree Jackson and told the police the person in the photograph was not the third person.
55. The only testimony that could have supported the theory that Tyree Jackson was in fact the third person was given by Samuel James, who testified that Hans and Tyree were with Ike when Ike picked the gun up at James' house, and that Ike, Hans, and Tyree returned to James' house after the shooting. This evidence was so inconsistent with the rest of the evidence at trial as to be insufficient to create a reasonable doubt that the Defendant was not the third person.

Gang Evidence

56. The State presented gang expert testimony in the form of firsthand information, with its primary gang expert being Isaac Hodge, a self-described longtime leader of the Family Mob gang, who testified generally about the existence, membership, and activities of Minneapolis gangs including the Rolling 30s Bloods, the Family Mob, and the Gangster Disciples (“GD’s”). Additional gang evidence came from firsthand testimony of other self-described gang members, including Anthony “Cornbread” Collins, a GD; Dameon Leake, a Rolling 60s Crip (friendly with the Family Mob); Kiron Williams, a Family Mob; Terry Arrington, a Black Stone (friendly with the Family Mob); and Samuel James, a Blood. In addition, other people who live in the community and are personally familiar with the Defendant’s gang affiliation, but who did not testify about their own gang affiliation or lack thereof, gave firsthand testimony of their knowledge.
57. The Rolling 30s Bloods (“Bloods”) have existed in Minneapolis since the early 1990s. The Bloods have more than three members; at least 15 individuals were identified at trial as being Bloods. The Bloods have, as a primary activity, the commission of crimes including shooting rival gang members—sometimes to kill and sometimes to scare—as well as aggravated robbery and selling drugs. The shootings are sometimes drive-by, sometimes walk-up, sometimes shooting-up a park or a rival’s neighborhood.
58. Traditionally, the Bloods have used red as their signature color. Lately, gangs are moving away from signature colors because they are too easily identifiable to police.
59. The area around and including 34th and Chicago in Minneapolis is commonly understood by Bloods and rival gang members to be Bloods territory.
60. In November 2002, the Defendant was a member of the Rolling 30’s Bloods with the nickname “Skits” or “Little Skits,” after having been “jumped in” to the Bloods in January 2001. The Defendant is a former Vice Lord with the nickname “Little Lord.”
61. Also identified as Bloods were: Artavies “Tay” Brown; Tommie “Little Tommie” Milton; Reggie Ferguson, a retired leader; Eugene Sandberg; Solomon “Lazy” Shannon; Grant Tyus; Larry “Mellow” Tyus; Alonzo Graham; James “Monk” or “Mook” Graham; Donald Jackson; Michael Burrell, the Defendant’s brother; Konata Hill; Calvin Ferguson; Arthur Adams; Kye Powell; and Deaunteze Bobo. Some of these individuals have died as a result of violence, and others are or have been incarcerated. Hans Williams was identified as a Blood or a Blood wanna-be or a “do”-boy. Ike Tyson was identified as both Tyson Mob (also referred to as T-Mob or Tyson Mafia) and Blood, because the Tyson Mob is closely affiliated with the Bloods.

62. The Family Mob and the Gangster Disciples, also referred to as “GD’s,” are friendly with each other, and both are enemies of the Bloods. The Family Mob is a clique or a gang that derives from the Gangster Disciples gang, having split from the Gangster Disciples in 1992, and are also friendly with other gangs, including the 20s gangs and the Lake Street Boys. The Bloods are enemies of the Family Mob, the Gangster Disciples, the Crips, and the Black Stone gang.
63. A person joining a gang is initiated by being “jumped in,” meaning beat-up.
64. Young gang members have to “earn their stripes” by riding and shooting at rivals. A person transferring from one gang to another would have to prove his loyalty to the new gang by shooting at rivals. A young member who is trying to make a name for himself is often a “rider.” A rider always has a gun, and he rides in cars along with fellow members and shoots at rivals. The Defendant and Timothy Oliver were both riders for their respective gangs.
65. Loyalty to one’s own gang and retaliation against enemies are essentials in gang life. Gang members will lie, steal, cheat, and kill for their allies. If one gang member is in prison for life, he will “take” another case by falsely confessing to a crime in order to get a fellow gang member cleared. Retaliation involves doing to an enemy what they did to your gang because a gang is a family. Turf is to be respected.
66. Gang members do not report shootings to the police. Instead, they retaliate.
67. If a gang member gives information to the police or in court about another gang member—whether an ally or a rival—he is considered to be a snitch. Gang members intimidate, hurt, or even kill, snitches.
68. The general protocol is that the younger gang members commit the violent acts, including doing the shootings, and they shoot at rivals who are or have been shooting at them. Protocol dictates that the older, senior gang members do not commit violent acts against the younger, smaller rivals because of the unfair advantage.
69. Timothy Oliver, a rider for the Gangster Disciples in the Gangster Disciples/Family Mob neighborhood, had a reputation of shooting the most Bloods, even shooting older Bloods. The Bloods were after Oliver and had an understanding to “blast [Oliver] on sight.” In November 2002, killing Oliver would earn a young Blood “stripes.”
70. In November 2002, there was an escalating war involving the Rolling 30s Bloods against the Gangster Disciples and the Family Mob. The war involved 3 or 4 shootings per day. The Defendant was living in Bemidji, Minnesota; Artavies “Tay” Brown, a Blood who was older than the Defendant, called the Defendant’s Bemidji home several times in the week before November 22, 2002. Tay

informed the Defendant that the war was going on, and told the Defendant to go to Minneapolis. The Defendant's mother drove him to Minneapolis.

CONCLUSIONS OF LAW:

1. The testimony given by the State's witnesses was materially consistent, materially unimpeached, and credible. The testimony given by the defense witnesses was materially inconsistent, routinely impeached on material facts, and not credible.
2. The State's evidence, which includes firsthand testimony, photographs, phone calls, letters, reports, and other documents, proves beyond a reasonable doubt that the Defendant was not only the third person involved, but was the sole person shooting on November 22, 2002 and that he killed Tyesha Edwards.
3. To prove first degree murder and attempted murder, the State must prove the Defendant "cause[d] the death of a human being with premeditation and with intent to effect the death of the person or another." Minn.Stat. §609.185(a)(1). Here, the State's evidence proves beyond a reasonable doubt that on November 22, 2002, the Defendant premeditated the shooting, and that he shot at Timothy Oliver with the intent to kill Oliver, and that Tyesha Edwards died as a result of being struck by one of the bullets intended for Oliver.
4. To prove first degree murder and attempted murder for the benefit of a gang, the State must prove the Defendant committed first degree murder and attempted murder "for the benefit of, at the direction of, in association with, or motivated by involvement with a criminal gang, with the intent to promote, further, or assist in criminal conduct by gang members." Minn.Stat. §609.229, subd.2. A criminal gang is defined as "any ongoing organization, association, or group of three or more persons, whether formal or informal, that has, as one of its primary activities, the commission of one or more of the offenses listed in section 609.11, subdivision 9; has a common name or common identifying sign or symbol; and includes members who individually or collectively engage in or have engaged in a pattern of criminal activity." Minn.Stat. §609.229, subd. 1.
5. Here, the State's evidence proves beyond a reasonable doubt that the Rolling 30's Bloods and the Family Mob and the Gangster Disciples are gangs; the Defendant was a member of the Rolling 30's Bloods on November 22, 2002 and that he was an enemy of the Family Mob and the Gangster Disciples; and the Defendant's commission of the November 22, 2002 shooting that killed Tyesha Edwards was done in association with the Rolling 30's Bloods, was motivated by his involvement with the Rolling 30's Bloods, and benefitted the Rolling 30's Bloods.
6. To prove first degree murder and attempted murder in a drive-by shooting, the State must prove the Defendant "cause[d] the death of a human being with intent to effect the death of the person or another, while committing or attempting to

commit . . . a drive-by shooting.” Minn.Stat. §609.185(a)(3). A drive-by shooting is defined as when a person “recklessly discharges a firearm at or toward . . . a person, or an occupied building or motor vehicle,” “while in or having just exited from a motor vehicle.” Minn.Stat. §609.66, subd. 1e(a), (b). The term “having just exited a motor vehicle” is defined as “having exited ‘only a moment ago,’” which means “requiring the immediate action of shooting following the exiting from an automobile.” *State v. Lewis*, 638 N.W.2d 788, 791 (Minn.App. 2002).

7. Here, the State’s evidence does not prove beyond a reasonable doubt that the Defendant did the shooting while having just exited a motor vehicle. The testimony is unclear about exactly how much time the Defendant spent outside of the vehicle, moving through yards, hiding behind the porch of 3436 Chicago, looking for, aiming, and shooting at Oliver. Without these details, it cannot be said beyond a reasonable doubt that the shooting occurred immediately after the Defendant exited the vehicle.
8. Thus, the State has proven beyond a reasonable doubt that the Defendant committed the following: intentional, premeditated murder of Tyesha Edwards by transferred intent; intentional, premeditated attempted murder of Timothy Oliver; intentional, premeditated murder of Tyesha Edwards for the benefit of a gang by transferred intent; and attempted intentional, premeditated murder of Timothy Oliver for the benefit of a gang.
9. The State has failed to prove beyond a reasonable doubt that the Defendant committed a drive-by shooting. The State has therefore failed to prove the Defendant committed first degree murder by drive-by shooting; first degree murder for the benefit of a gang by drive-by shooting; first degree attempted murder by drive-by shooting; and first degree attempted murder for the benefit of a gang by drive-by shooting.

ORDER:

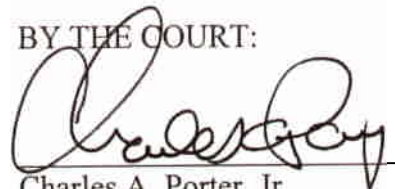
1. On Count 1, Murder in the First Degree, the Court finds the Defendant **GUILTY**.
2. On Count 2, Murder in the First Degree for the Benefit of a Gang, the Court finds the Defendant **GUILTY**.
3. On Count 3, Murder in the First Degree While Committing a Drive-By Shooting, the Court finds the Defendant **NOT GUILTY**.
4. On Count 4, Murder in the First Degree While Committing a Drive-By Shooting for the Benefit of a Gang, the Court finds the Defendant **NOT GUILTY**.
5. On Count 5, Attempted Murder in the First Degree, the Court finds the Defendant **GUILTY**.

6. On Count 6, Attempted Murder in the First Degree for the Benefit of a Gang, the Court finds the Defendant **GUILTY**.
7. On Count 7, Attempted Murder in the First Degree While Committing a Drive-By Shooting, the Court finds the Defendant **NOT GUILTY**.
8. On Count 8, Attempted Murder in the First Degree While Committing a Drive-By Shooting for the Benefit of a Gang, the Court finds the Defendant **NOT GUILTY**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: April 9, 2008

BY THE COURT:



Charles A. Porter, Jr.
Judge of District Court